



ROBINSON MCFADDEN

ATTORNEYS AND COUNSELORS AT LAW

175024 SA
POSTED
 0808-2-05
 ROBINSON, MCFADDEN & MOORE, P.C.

COLUMBIA | GREENVILLE

August 2, 2005

HAND DELIVERED

Mr. Charles Terreni
 Chief Clerk of the Commission
 Public Service Commission of South Carolina
 Synergy Business Park, Saluda Building
 101 Executive Center Drive
 Columbia, SC 29210

Frank R. Ellerbe, III
 1901 MAIN STREET, SUITE 1200
 POST OFFICE BOX 944
 COLUMBIA, SOUTH CAROLINA 29202
 PH (803) 779-8900 | (803) 227-1112 direct
 FAX (803) 252-0724 | (803) 744-1556 direct
 fellerbe@robinsonlaw.com

Re: MCI Arbitration with Horry Telephone Cooperative
 Docket No. 2005-188-C

Dear Mr. Terreni:

Enclosed for filing please find the Petition for Rehearing or Reconsideration of Order No. 2005-383 of Time Warner Cable Information Services (SC), LLC in the MCImetro Access Transmission Services Arbitration for Interconnection with Horry Telephone Cooperative. By copy of this letter we are serving the same on counsel for the parties. Please date-stamp the extra copies of the Petition as proof of filing and return them with our courier.

If you have any questions, please have someone on your staff contact me.

Yours truly,

ROBINSON, MCFADDEN & MOORE, P.C.

Frank R. Ellerbe, III

FRE/bds
 Enclosure

cc/enc: Julie Y. Patterson, Esquire (via email)
 Darra W. Cothran, Esquire
 John M. Bowen, Jr. Esquire
 Margaret M. Fox, Esquire
 Dan F. Arnett, Chief of Staff of ORS
 Shannon Hudson, Staff Attorney ORS
 Ms. Charlene Keys (via email)

RECEIVED DATE: *Green Card OK*
 SERVICE: *OK DB Duke*

**BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA**

Docket No. 2005-188-C

In re:

**Petition of MCImetro Access Transmission
Services, LLC for Arbitration of Certain
Terms and Conditions of Proposed
Agreement with Horry Telephone
Cooperative, Inc. concerning
Interconnection and Resale under the
Telecommunications Act of 1996**

**PETITION FOR REHEARING
OR RECONSIDERATION OF
ORDER NO. 2005-383
OF TIME WARNER CABLE
INFORMATION SERVICES,
(SOUTH CAROLINA), LLC**

Time Warner Cable Information Services (South Carolina), LLC, doing business as Time Warner Cable ("TWCIS"), submits this petition seeking reconsideration or rehearing of Order No. 2005-383 pursuant to S.C. Code Section 58-9-1200 and 26 S.C. Regs. 103-836(4). In support of its petition TWCIS would show the following:

1. On July 20, 2005, the Public Service Commission of South Carolina ("Commission") issued Order No. 2005-383 in which it denied TWCIS' request to intervene in the arbitration proceeding between MCImetro Access Transmission Services, LLC ("MCI") and Horry Telephone Cooperative, Inc. ("HTC"). Counsel was served with Order No. 2005-383 by certified mail on July 27, 2005.

2. TWCIS submits that its substantial rights have been prejudiced because the findings, inference, conclusions, and decisions are in error of law, violate constitutional and statutory provisions, and are arbitrary and capricious or characterized by an abuse of discretion.

3. When TWCIS applied for authority to offer services in South Carolina it

informed the Commission and HTC as a member of the South Carolina Telephone Coalition ("SCTC") that in order to offer service the company had to establish a connection over the public switched telephone network ("PSTN"). TWCIS also informed the Commission and HTC that it planned to establish that connection through its contract with MCI. Neither HTC nor the Commission raised an objection to the MCI-TWCIS arrangement. The Commission approved the initial application which grants TWCIS the authority in HTC's service area with knowledge of the contractual relationship between MCI and TWCIS. This arbitration addresses the very issue of whether it is appropriate for MCI to offer these services to TWCIS. The decision reached in this arbitration will have a critical impact on TWCIS' ability to provide service to customers in HTC's service area.

4. The Commission's decision is in error of the law in that it violates the S.C. Administrative Procedures Act ("Act"). By not allowing TWCIS to participate as a party of record in a contested case while the Commission decides issues directly affecting its contractual rights violates the Act. See *Garris v. Governing Board of SC Reinsurance Facility*, 333 S.C. 432, 511 S.E.2d 48, 52 (Sup. Ct. 1999).

5. Order No. 2005-383 cites HTC's arguments that the Commission has previously denied TWCIS' Petition to Intervene in a similar arbitration proceeding. The arbitration hearing in the similar proceeding underscores why the Commission's decision is a fundamental denial of TWCIS' due process rights. The Commission refused to allow TWCIS to participate in an arbitration between MCI and Farmers Telephone Cooperative, Inc.; Home Telephone Co., Inc.; PBT Telecom, Inc.; and Hargray Telephone Co. (collectively the "rural ILECs"). During the MCI – rural ILEC arbitration hearing, MCI and the rural ILECs were given the opportunity to discuss the

ability of MCI to provide service to TWCIS; the relationship between TWCIS and MCI; whether TWCIS' relationship introduces ambiguity into the interconnection agreement; and whether TWCIS' provides telecommunications services that may or may not trigger interconnection obligations. The resolution of these issues directly impact TWCIS' ability to provide competitive voice services to its customers in South Carolina. By not allowing TWCIS to participate in yet another arbitration which directly and critically impacts the company's ability to provide service to customers in HTC's service areas violates the S.C. Administrative Procedures Act, as well as fundamental principles of due process.

6. S.C. Constitution Article I, Section 22, requires an administrative agency to give procedural due process to parties that come before it even when the matter is not a "contested case" as defined in the Act. See *Garris*, 511 S.E.2d at 52. S.C. Constitution Article I, Section 3, requires agencies to meet minimum standards of due process. Due process is flexible and calls for the procedural protection demanded by the particular situation. *Stono River Environmental Protection Association v. SC Dept. Health & Environmental Control*, 305 S.C. 90, 406 S.E.2d 340, 342 (Sup. Ct. 1991). This situation is unique and calls for a different result from the Commission's past decisions in order to protect TWCIS' due process rights. The Commission's failure to allow TWCIS to participate violates due process.

6. TWCIS' rights have been substantially prejudiced by the Commission's failure to allow TWCIS to participate in the arbitration proceeding. See *Leventis v S.C. Dept. of Health & Environmental Control*, 340 S.C. 118, 530 S.E.2d 643 (Ct. App. 2000). The primary disputed issue in this arbitration is whether MCI will be able to serve TWCIS customers through its agreement with HTC. TWCIS has rights in HTC's


interconnection agreement with MCI as a third party beneficiary of the contract. *Bob Hammond Construction Co., Inc. v. Banks Construction Co.*, 312 S.C. 422, 440 S.E.2d 890, 891 (Ct. App. 1994). The Order's denial of TWCIS' request to participate is arbitrary, capricious and characterized by an abuse of discretion.

Time Warner Cable Information Services (South Carolina), LLC respectfully requests that the Commission issue an Order:

- A. Reversing its decision in Order No. 2005-383;
- B. Rehearing the arbitration with TWCIS as a participant; and
- C. Granting such other relief as is just and proper.

Dated this 2ND day of August, 2005.

ROBINSON, McFADDEN & MOORE, P.C.

By 
Frank R. Ellerbe, III
fellerbe@robinsonlaw.com
Bonnie D. Shealy
bshealy@robinsonlaw.com
Post Office Box 944
Columbia, SC 29202
Telephone (803) 779-8900
Facsimile (803) 252-0724

Attorneys for Time Warner Cable Information
Services (South Carolina), LLC

**BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2005-188-C**

In Re:

Petition of MCImetro Access Transmission
Services, LLC for Arbitration of Certain
Terms and Conditions of Proposed
Agreement with Horry Telephone
Company concerning Interconnection
and Resale under the Telecommunications
Act of 1996

CERTIFICATE OF SERVICE

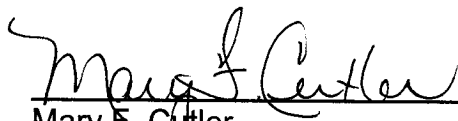
This is to certify that I, Mary F. Cutler, a legal assistant with the law firm of Robinson, McFadden & Moore, P.C., have this day caused to be served upon the persons named below the **Petition for Rehearing or Reconsideration of Order No. 2005-383** in the foregoing matter by placing a copy of same in the United States Mail, postage prepaid, in an envelope addressed as follows:

Darra W. Cothran, Esquire
Woodward, Cothran & Herndon
P.O. Box 12399
Columbia, SC 29211

M. John Bowen, Jr., Esquire
Margaret M. Fox, Esquire
McNair Law Firm, P.A.
P.O. Box 11390
Columbia, SC 29211

Dan F. Arnett, Chief of Staff
Shannon Hudson, Esquire
Florence P. Belser, General Counsel
Office of Regulatory Staff
1441 Main Street, 3rd Floor
Columbia, SC 29201

Dated at Columbia, South Carolina this 2nd day of July 2005.



Mary F. Cutler